HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 150 of 2004 (M/S)

Shivraj Singh s/ Ratan Lal Chauhan
Vs.
Presiding Officer Labour Court
Dehradun

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 29.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 150 (M/S) of 2004

Shivraj Singh
S/o Ratan Lal Chauhan
R/o Vilalge Bahadrabad
District Haridwar. ….. Petitioner

Vs

1. Presiding Officer, Labour Court
Dehradun.
2. Director, Irrigation Research Institute,
Roorkee, Distt.- Haridwar. …… Respondents.

Counsel for the petitioner Sh. Pankaj Miglani
Standing Counsels for the respondent.

Dated: 29.4.2004

Hon'ble Rajesh Tandon, J.

Heard Sh. Rankaj Miglani learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction setting aside the impugned award dated 14-1-2000 and further for a direction directing the respondent no.2 to reinstate the petitioner.

Brief facts giving rise to the present writ petition are that the petitioner has worked as a Baildar in the establishment of the respondent No.2 as a muster roll employee since 25-5-87 to 14-1-90. Accordingly to the case of the petitioner he was removed from doing any sort of work on 15-1-90 without any prior notice. The petitioner has raised a labour dispute for redressal of his grievance and the

dispute was referred to Labour Court under Section 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred as Act) by the State Government.

Learned Counsel for the petitioner has raised the question that all the points having been decided by the Labour Court, it was not open for the Labour Court to have permitted the employer to invoke the provisions of section 6-Q of the Act.

The labour Court, while adjudication the dispute, has recorded a finding that the petitioner has worked for more than 240 days, therefore, the termination of the petitioner without following the provisions of section 6-N of the Industrial Disputes Act is wholly illegal. The said findings are quoted below:-

''सेवायोजको ने फरवरी 89 से 90 की अवधि के मस्टररोलों की छाया प्रतियॉ दाखिल की व इस अवधि में वादी श्रमिक के कार्यदिवसों का विवरण प्रस्तुत किया जिसमें भुंगतान किये गये कार्यदिवसों की संख्या 221/1/2 दिन दिखाई गई है जिनमें अवकाषो की संख्या जोडकर 240 दिन से अधिक हो जाती है। न्यायालय के निर्देष पर सेवायेाजकों के प्रतिनिधि ने वर्ष 1987 से जनवरी 90 की अवधि का वर्षभार कार्यदिवसो का विवरण प्रस्तुत किया जिनसे प्रकट हुआ कि वादी श्रमिक ने वर्ष 1987 में 100 दिन, 1988 में 214 दिन,1989 में 294 दिन वर्ष 90 में जनवरी 90 में 10 दिन काम किया था। वर्ष 1988 व 1989 में अगस्त व सितम्बर महीनों में कार्यदिवस शून्य दिखायें गये है जो बरसात के महीने होते है पर इन व वर्षो में साप्ताहिक व राजकीय अवकाशों को जोडकर कार्यदिवसों की संख्या 240 दिनों से अधिक हो जाती है। अतः स्पष्ट है कि 15.1.90 तक वादी श्रमिक ने 240 दिन से अधिक काम कर लिया था व उसे उ0प्र0औ0वि0अधिनियम की धारा 6–एन के अन्तर्गत लाभ/अधिकार उदभूत हो गये थे जिनसे उसको वंचित नही किया जा सकता था।''

The Labour Court has also recorded a finding that the petitioner is fully covered under the definition of the Industry. The matter has

already been adjudicated in the case of State of U.P. Vs Presiding Officer, Labour Court & another reported in 2003(96) FLR 317 by the Uttaranchal High Court by his Lordship Hon'ble Mr. Justice P.C. Verma after referring the judgment of the Apex Court in Des Raj & others Vs State of Punjab & others and Bangalore Water Supply & Sewerage Board Vs A. Rajappa's case. Relevant paragraph 13 & 14 of the judgment of the Uttaranchal High Court are quoted below:

> *"The Apex Court in Des Raj and others Vs State of Punjab and others reported in 1988 (57) FLR 176 (SC), after applying the aforesaid text on the nature of activities carried on by the Irrigation Department held that Irrigation Department is an 'Industry'.*
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> *Since the Kalagrah unit is the branch of Irrigation Department, therefore, the same is also an Industry within the definition of 'Industry' under the U.P. Industrial Disputes Act in view of the law laid down by the Apex Court in Bangalore Water Supply and Sewerage Board Vs A. Rajappa's case."*

So far as the delay in filing the claim petition is concerned, the finding was also recorded in favour of the employee concerned. While concluding the award, the Labour Court has directed for the benefit of section 6-Q of the U.P. Industrial Disputes Act in favour of the employer.

Similar matter came up before this Court in Dharam Singh Vs Presiding Officer, Labour Court, decided by Hon'ble Mr. Justice Irshad Hussain on 2-9-2003, where the employee concerned also worked as Baildar in the establishment as a muster roll employee and his Lordship Hon'ble Mr. Justice Irshad Hussain has given the benefit of reinstatement with full back wages from the date of the order. The order passed by his Lordship Hon'ble Mr. Justice Irshad Hussain is quoted below:

"The factual aspects of the case as averred in the petition and also as taken note of by the labour court, from the material on record before it, are not in dispute. A bare perusal of the award of the Labour Court dated 30.11.1999 make it obvious that the termination of the petitioner-Baildar was held to be illegal as being in contravention of the provisions of section 6-N of the Act. The learned Standing Counsel could not high-light any impropriety in the appraisal and appreciation of the material placed before the Labour court in coming to the said conclusion. Considering this aspect of the matter, there is force in the argument of the learned counsel for the petitioner that the Labour Court having held the termination as being illegal the reinstatement of the petitioner should have legally been directed instead of moulding the relief to bring it within for corner of the provision of section 6-Q of the Act. It was not a case of retrenchment which would have attracted the provisions of section 6-Q of Act which provide for re-employment of retrenched workman. Even otherwise the termination having been held as illegal, the Labour Court while moulding the relief on account of long delay, could have at the best only restored to refusal to grant full back wages to the petitioner workman. Strangely enough the Labour Court has also adopted this option by observing that on account of long delay there would be no justification to saddle the employer with the responsibility of payment of full back wages and thereby directed the payment of only a consolidated sum of Rs. 5000/- as compensation under this count. While the petitioner workman was being deprived of the full back wages there was no justification in putting him to double jeopardy by giving

him relief under section 6-Q of the Act by treating him as a retrenched workman.

In support of the argument learned counsel for the petitioner placed reliance on a decision of the Apex Court pertaining to the dispute between Ajaib Singh and Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. and another; reported in 1999(82) FLR 137 and wherein the workman was directed to be reinstated with full back wages by the Labour Court despite a long delay in raising the dispute. O a petition by the management the award was set aside on account of delay of 7 years and the Division Bench of the High Court affirmed the judgment in special appeal. The workman took up the matter in appeal to the Apex Court which restored the award of the Labour Court but on account of delay back wages were awarded to the extent of 60% only till the date of the award of the Labour court and full back wages thereafter till his reinstatement. The principle laid down was that on account of admitted delay the Labour Court could appropriately mould the relief by denying the workman some part of the back wages. Considering the ratio of the decision I am of the view that the contention of the learned counsel for the petitioner need to be accepted by interfering with the impugned award and to grant the relief of re-instatement of the petitioner workman while maintaining the remaining part o the impugned award."

In view of the aforesaid facts and circumstances, write petition is squarely covered by the judgment of the Uttaranchal High Court in writ petition No. 7029 of 2001 mentioned above.

The petitioner, therefore, is entitled for reinstatement. The writ petition partly succeeds and is accordingly allowed. The impugned

award dated 14-1-2000 is quashed and the respondent No. 2 is directed to reinstate the petitioner forth-with and to pay him full wages from the date of this order.

(Rajesh Tandon J.)

Dated: 29.04.2004

M.K.